

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1870 of 1997

BINDUBEN S PANCHOLI

Versus

STATE OF GUJARAT

Appearance:

MR ASHIN H DESAI for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR MK PUROHIT for Respondent No. 2
MR NV ANJARIA for Respondent No. 3
MR BR KYADA for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 22/12/97

ORAL ORDER

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction, to quash and set aside order dated January 06, 1997 passed by Taluka Development Officer Jasdan, by which Administrator is appointed for Atkot Gram Panchayat as well as notification dated February 05, 1997, by which programme for holding elections of Atkot Gram Panchayat is declared.

2. The petitioners are citizens of village Jasdan and were members of Jasdan gram panchayat. After 74th amendment to the Constitution of India came into force, Atkot gram panchayat was constituted as provided by Article 243-B of the Constitution. Mr. B.J.Solanki was elected as President of Atkot Gram Panchayat. The term of Atkot gram panchayat expired on July 05, 1997. Therefore, Taluka Development Officer - Jasdan appointed Administrator for Atkot gram panchayat by an order dated January 06, 1997, which is produced at Annexure "A" to the petition. Thereafter, the election officer issued notification dated February 05, 1997 for holding elections of Atkot gram panchayat, which is produced at Annexure "B" to the petition. The petitioners have

averred in the petition that the Administrator was wrongly appointed on the footing that the term of the panchayat expired on January 05, 1997 and therefore, the order at Annexure "A" being bad, deserves to be set aside. It is pleaded in the petition that, without giving any opportunity of being heard to the petitioners and other similarly situated members and / or duly elected members of Atkot gram panchayat, the Administrator could not have been appointed and therefore, the orders which are produced at Annexure "A" and "B" to the petition are liable to be set aside. It is asserted by the petitioners that, by a letter dated November 22, 1996, which is produced at Annexure "C" to the petition, the Collector, Rajkot had informed the Mamlatdar - Upleta that the period of five years was to commence from the date of first meeting of Atkot Gram Panchayat and therefore, neither the Administrator could have been appointed for Atkot gram panchayat, nor notification could have been issued for holding election of Atkot gram panchayat. It is contended in the petition that orders at Annexure "A" and "B" are passed on political interference by persons in power and therefore, the petition deserves to be accepted. According to the petitioners, the impugned orders are unconstitutional, discriminatory as well as illegal and therefore, by filing the present petition, they have claimed reliefs, to which reference is made earlier.

3. Mr. M.V.Kaila, Under Secretary to the State Election Commission, has filed an affidavit in reply on behalf of the respondent No.3 controverting the averments made in the petition. In the reply affidavit, it is stated that, after appointing Administrator of Atkot gram panchayat on January 06, 1997, the State Election Commission had issued notification dated February 05, 1997 for holding the poll and as election was held on March 02, 1997, the petition should be dismissed. Alongwith affidavit in reply, list of members who are elected is produced. In the reply affidavit, it is claimed that the petition is barred by principles of delay latches and acquiescence on part of the petitioners, as the petitioners who were members of the gram panchayat of which term expired on January 05, 1997, had never objected to the holding of the election on the expiry of the term of panchayat. The deponent of the reply affidavit has asserted that the members of the duly constituted gram panchayat are necessary parties to the petition and in absence of duly elected members, whose election is sought to be set aside, the petition should not be entertained. By filing reply affidavit, the respondent No.3 has denied that the orders which are

produced at Annexure "A" and "B" to the petition were passed politically to help certain class of persons, as alleged in the petition. What is emphasized in the reply affidavit is that the election of Atkot gram panchayat was held under the provisions of Gujarat Panchayats Act, 1961 on December 01, 1991 and as the first meeting of the gram panchayat was held on January 06, 1992, the term of the gram panchayat was rightly treated to have expired on January 05, 1997 and therefore, the petition should be dismissed. It is also mentioned therein that there was mistake on part of the office of State Election Commission and the Collector in intimating to the Atkot gram panchayat by letter dated November 22, 1996 that the period of five years was to commence from the date of its first meeting and that the panchayat would have full tenure of five years from January 13, 1996 and, therefore, the petitioner is not entitled to invoke principle of estoppel against the respondents. By filing affidavit in reply, the respondent No.3 has demanded dismissal of the petition.

4. The fact that Atkot gram panchayat was duly constituted on January 06, 1992 is not in dispute. Therefore, under the provisions of Gujarat Panchayats Act, 1961, the term of the Atkot gram panchayat was to expire on January 05, 1997. The Gujarat Panchayats Act, 1993 (Act No. 18 of 1993) came into force w.e.f. August 10, 1993. The said Act was enacted in order to bring the provision of Gujarat Panchayats Act, 1961 in conformity with the constitution of India, 73rd Amendment Act, 1992. The Atkot gram panchayat came to be superceded by order dated May 13, 1995 under the Gujarat Panchayats Act, 1993 and the Administrator took over the charge of gram panchayat on May 18, 1995. The State Election Commission directed to hold election by notification dated March 11, 1996 under the Act of 1993. The election took place on April 07, 1996 and the panchayat was duly constituted when the first meeting was held on April 30, 1996. In view of the provisions of section 253(3) and 253(4) of the Gujarat Panchayats Act, 1993, there is no manner of doubt that the duration of the duly constituted panchayat after dissolution can be only for the remainder period of dissolved Panchayat which is quite evident from the provisions of section 13(3) of the Act. The term of the dissolved panchayat was upto January 05, 1997 since it was duly constituted on January 06, 1992. Under the circumstances, the Administrator was appointed on January 05, 1997 who took over the charge on January 06, 1997 which cannot be termed as illegal in any manner. Thereafter, the State Election Commission issued notification dated February 05, 1997 for holding poll and

the election was held on March 02, 1997. The fact that the result of the elections have been declared is not disputed by the petitioners. In the reply affidavit, it is specifically mentioned that there was mistake on part of the office of the State Election Commission and the Collector in intimating to the Atkot gram panchayat by letter dated February 22, 1996 that the period of five years was to commence from the date of its first meeting which was held on April 30, 1996. This assertion made on behalf of the respondent No.3 is not disputed by the petitioners and in view of the provisions of law, there is no manner of doubt that there was mistake on part of the Collector in intimating to the Atkot gram panchayat that the period of five years was to commence from the date of its first meeting and that the panchayat would have full tenure of five years from April 30, 1996. Under the circumstances, the petitioners are not entitled to invoke the principle of estoppel for claiming relief prayed for in the petition.

5. As observed earlier, the elections are already held and the results are also declared. The petitioners have not taken care to implead newly elected members as parties to the petition. There is no manner of doubt that if the reliefs as claimed for in petition are granted, it would amount to setting aside election of duly elected members. In absence of the duly elected members, whose election is sought to be set aside, the petition cannot be entertained and is liable to be dismissed.

6. In overall view of the matter, I am of the opinion that no ground is made out by the petitioners for granting any of the reliefs claimed for in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Notice is discharged with no orders as to costs.

DECEMBER 22, 1997 [J.M.PANCHAL, J.]

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